

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Writ Petition No. 1320 of 2006

1. Shri Govind Bhagwan Pednekar
and others ..Petitioners

vs.

1. Sindhudurga Zilha Madhyavarti
Sahakari Bank Ltd. and ors. ..Respondents

Shri G.N.Salunke for petitioners.
Dr.D.R.Talankar for respondent nos.1 and 3

CORAM: S.B.MHASE J.
7th April, 2006

P.C.

1. The order passed in Misc.Application No.1735 of 2004 by Maharashtra State Cooperative Appellate Tribunal, Mumbai on 15th October 2005 is under challenge. By the said order the prayer made by the petitioners for condonation of delay of 2 years in filing the appeal as against the award passed in dispute bearing No.S.C.C.K.No.1450 of 2002 by the Cooperative Court No.II, Kolhapur is rejected. In short, the delay condonation application filed by the petitioner is rejected.

2. Dispute S.C.C.K.No.1450 of 2002 was filed by respondent no.1 Bank as against the petitioner nos. 1 to 4 and one Yeshwant Dattaram Asolkar who has been shown as respondent no.2 in this petition for recovery of the amount of Rs.13,37,133/- In the said dispute though the petitioners and respondent no.2 were duly served only

petitioner no.1 has filed the written statement. Petitioner Nos.2, 3 and respondent no.3 did not file the written statement. Equally petitioner no.4 - institution - who was opponent no.5 also did not file any written statement. However, petitioner no.1 has filed the written statement admitting that the loan was borrowed from the disputant bank and it is further submitted in the written statement that due to financial difficulties the loan could not be paid. On 13th December, 2002, petitioner no.1 along with petitioner nos. 2 and 3 and respondent no.2 have filed say at Exh.9 stating that they are ready to pay Rs.1,00,000/- for the month of July, 2003 and thereafter they are ready to pay monthly instalments of Rs.50,000/- and, therefore, they did not participate in the proceedings. The award was passed by Cooperative Court No.II, Kolhapur on 15th January, 2003 directing the petitioners and respondent no.2 to pay jointly and severally a sum of Rs.13,37,133.00 to respondent no.1 disputant Bank along with future interest at the rate of 18.50% p.a. on Rs.5,50,000/- with effect from 1st January, 2002 till realisation of the entire decretal amount. The petitioners and respondent no.2 were further directed to pay the decretal amount by following way i.e. Rs.1,00,000/- in the month of July 2003 and thereafter Rs.50,000/- p.m. to the disputant Bank payable from 15th August, 2003 till realisation of the entire decretal amount subject to any two defaults. Further cost and

expenses were awarded in the award. According to the petitioners till October and November, 2005 they have paid a sum of Rs.2,00,000/- However, since default was committed in respect of the payment being not made in accordance with the award, respondent no.1 appears to have obtained the certificate under sec.98 to execute the said award through the Recovery Officer and deposited the award with the recovery officer. It appears that the recovery officer thereafter tried to recover the amount from the petitioners and, therefore, the petitioners have decided to prefer appeal against the said award and have approached to the Cooperative Appellate Court. It is pertinent to note that in the application for condonation of delay, it is stated in para 5 that "the appellants/applicants state and submit that the impugned order has been passed on 15th January, 2003. The appellants/applicants have also paid approx.sum of Rs.2,00,000/- till October/November, 2004 against the said loan amount. The appellants were under bonafide belief that the decree shall be executed by the respondent Bank against the mortgaged properties of the appellants. However, respondent no.3 i.e. the Special Recovery Officer of the Bank started giving threats to execute the decree and award against the personal properties of the Appellants. The appellants have now decided to file the said appeal before the Hon'ble Appellate Court. In the circumstances, there is some delay in preferring the said

appeal. The said delay is of about 2 years for filing the present appeal. The delay is neither intentional nor deliberate. By causing the said delay, the appellants are in no way benefited and the said appellants are seriously trying to clear the dues of the Respondent Bank but could not succeed on account of non opening of the school for lack of permission from Konkan Krishi Vidyapeeth, Dapoli. The appellants respectfully submit that there is sufficient cause for condonation of delay in the interest of justice." This has been considered by the Maharashtra State Cooperative Appellate Court and the Appellate Court has observed that though sufficient cause is required to be construed liberally, has observed that the ground for condonation of delay, namely, that the recovery officer of the Bank had started giving threats to the appellants to execute the decree and award against the properties which were not mortgaged with the disputant Bank. This is something untenable. How can the recovery officer of the Bank can take action against the property which is not mortgaged with the Bank and secondly seeking to file an appeal on such grounds cannot be taken as "sufficient cause" for condonation of delay and, therefore, the application was rejected.

3. The learned counsel for the petitioner relied upon the judgments of the Supreme Court in N.Balakrishnan Vs.M.Krishnamurthy reported in (1998)7 S.C.C.123 and Ram

Nath Sao alias Ramnath Sahu and others Vs. Gobardhan Sao and others reported in (2002) 3 S.C.C.195. The propositions as laid down by the Apex Court are binding on this Court. However, the question is whether those propositions are applicable in the facts and circumstances of the present case. It is abundantly clear that even pending the dispute the claim was accepted by the petitioners and instalments were asked for and on that basis the claim has been decreed and instalments have been granted. The award passed was within the knowledge of the petitioner and some amount has also been deposited by the petitioners. The award was put up for execution since instalments as were granted in the award were not paid and thereafter the award became executable under sec.98 of the Cooperative Societies Act and the award was transferred to the recovery officer and since rigorous steps were being taken by the recovery officer for recovery of the amount the petitioners have decided to file an appeal. Since instead of proceedings against the mortgaged properties, according to the petitioners, the recovery officer probably tried to proceed against the petitioners personally. The question, therefore, which activated the petitioners to file an appeal is whether the award is executable personally as against the petitioners or against the personal properties of the petitioners and/or it is executable as against the mortgaged properties with the disputant Bank. Rule 107 of Maharashtra Cooperative

Societies Rules, 1961 provide procedure to execute award and manner and priorities of proceedings against movable and immovable properties of judgment debtor. However, since the main claim was accepted in the dispute all these questions if at all can be raised can be raised in execution before the recovery officer by filing appropriate objections to the steps taken by the recovery officer and as provided in the said Rule 107. Instead of following that course, the petitioners have decided to file an appeal against the main award and thereby further made request to condone the delay. It is pertinent to note that sufficient cause which is contemplated for condonation of delay is a cause which incapacitated the party to approach the Appellate Court within a period prescribed by law. Here in the present case the petitioners were not incapacitated as a result of any event to approach the Appellate Court and, therefore, even though we take a liberal approach in the matter still the ground stated by the petitioners cannot come within the compass of "sufficient cause". Therefore, I find it difficult to apply the ratio of the Apex Court judgments which are referred to above to the facts of the present case. The case of the petitioners is not coming within the four corners of the words "sufficient cause" and that has been rightly analysed by the Appellate Court also. Instead of following appropriate remedy a wrong remedy by way of filing an appeal is availed and, therefore, no

interference is called for. Petition is rejected. The learned counsel at this stage submitted that liberty may be granted to approach the Recovery officer. There is no necessity of passing a specific order in this respect.

(S.B.MHASE J.)